

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION**

WILLIAM LEONARD, JR.

Plaintiff,

v.

**RELIASTAR LIFE INSURANCE
COMPANY f/k/a NORTHWESTERN
NATIONAL LIFE INSURANCE
COMPANY,**

Defendant.

*
*
*
*
*
*
*
*
*
*
*

CASE No. 3:05-CV-1015-MEF-CSC

PLAINTIFF'S MOTION TO STRIKE

Plaintiff hereby moves this Court to strike certain affidavits, exhibits, and other evidentiary materials outside of Plaintiff's Amended Complaint, either attached in support of Defendant's Motion to Dismiss or referenced therein.

On February 21, 2006, Defendants' filed a Motion to Dismiss the Plaintiff's First Amended Complaint or, in the alternative, for Summary Judgment and Incorporated Memorandum of Law.¹ Plaintiff has previously addressed Defendant's alternative Summary Judgment Motion in Plaintiff's Motion to Continue filed on February 27, 2006.² Regarding Defendant's Motion to Dismiss, Plaintiff respectfully requests the Court to strike all information brought forth by Defendant that is not referenced in Plaintiff's Amended Complaint and, therefore, clearly outside the scope of the pleadings and improper for consideration on a motion to dismiss.

Specifically, Plaintiff requests that the Court strike the following: the affidavit of Brian J. Boschert (Def. Ex. "A") with attached Exhibits 2 through 9; the affidavit of Wendy Paquin (Def.

¹ See D.E. 16, entered 2/21/06

² See D.E. 17, entered 2/27/06

Ex. "B") and all attached exhibits; as well as any and all references to the above-referenced materials or statements and any other evidentiary materials outside of the pleadings attached to or found within Defendant's Motion. Defendant has referenced documents and other evidentiary materials to this Court that are not part of or referred to in Plaintiff's Amended Complaint in any form or fashion. Defendant has attempted to put the Plaintiff at a disadvantage by steering this Court to documents and information outside the scope of Plaintiff's pleadings and they should not be allowed to do so. The Defendant is attempting to circumvent the Court's duty in reviewing and ruling on a motion to dismiss. A motion to dismiss is to be decided as a matter of law and the only facts to be considered by the Court are those pled in Plaintiff's Amended Complaint.

WHEREFORE, Plaintiff hereby moves the Court to strike the above-referenced affidavits, exhibits, and any other evidentiary materials outside of the pleadings, either attached in support of Defendant's Motion to Dismiss or referenced therein.

Respectfully submitted this the 28th day of FEBRUARY, 2006.



JOSEPH H. "JAY" AUGHTMAN (AUG001)
JOHN E. TOMLINSON (TOM014)
Attorneys for Plaintiff

OF COUNSEL:

BEASLEY, ALLEN, CROW
METHVIN, PORTIS, & MILES, P.C.
P.O. Box 4160
Montgomery, AL 36103-4160
(334) 269-2343

CERTIFICATE OF SERVICE

I hereby certify that on the 28th of FEBRUARY, 2006 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Attorney(s) for Defendant Reliastar Life Insurance Company

Michael L. Bell
S. Andrew Kelly
LIGHTFOOT, FRANKLIN & WHITE, L.L.C.
The Clark Building
400 20th Street North
Birmingham, AL 35203
Telephone: (205) 581-0700
Facsimile: (205) 581-0799

Markham R. Leventhal
Stephan J. Vaoudris
Ben V. Seessel
JORDEN BURT, L.L.P.
777 Brickell Avenue, Suite 500
Miami, FL 33131-2803
Telephone: (305) 371-2600
Facsimile: (305) 372-9928


OF COUNSEL